THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 6300 OF 1998

Dated 19th January, 2007

Between:
Dorbala Radhakrishna Murthy

… Petitioner

And

The Deputy Inspector General of
Registration and Stamps,
Eluru Range, Eluru, West Godavari
District.

…Respondent

ORAL ORDER:

The petitioner was enrolled as an Advocate on 14th July, 1952 and was appointed as a Notary and the same is governed by the provisions of the Notaries Act, 1952. On 24.8.1996, he had notarized four affidavits sworn to by M/s. Kantamneni Krishna Rao and his sons, Poorna Basava Sankara Rao, Bhaskararao and Joshi.

On the premise that in the said affidavits, they have partitioned the properties and they attract stamp duty as per Section 2(15) read with Article 40 of Schedule 1A of Indian Stamp Act, notice dated 13.3.1997 was issued to the petitioner to obtain the partition list from the parties concerned and submit the same to the respondent – Deputy Inspector General of Registration and Stamps. The petitioner filed his explanation on 8.5.1997 stating that he was not having copies of the said affidavits as the said affidavits were taken by the inspecting staff of the respondent. Thereafter, another notice dated 16.6.1997 was issued wherein instructions were given to the petitioner to contact the parties and obtain the partition list from them. Explanation to the said notice was also given by the petitioner on 7.7.1997. Then, impugned proceedings in Memo No.SA1/1151/97, dated 14-2-1998 were issued wherein instructions have been issued to the petitioner to contact the parties and collect the deficit stamp duty of Rs. 18,520/- from them and remit the said amount in the Government treasury. Aggrieved by such demand and instructions issued in the impugned memo, this writ petition is filed.

It is the case of the petitioner that he has merely notarized the

affidavits sworn to by the parties wherein there was a reference to earlier partition, which was effected on 7.7.1996. It is further submitted that as much as in the affidavits, which were notarized, there is no recital for partition of the properties on the above said date, it would not attract the stamp duty as demanded by the respondents. In any event, it is the further submission of the petitioner that there is no provision for collection of stamp duty from the petitioner, who in turn, was requested to collect from the parties.

Counter affidavit is filed on behalf of the Deputy Inspector-General of Registration and Stamps wherein it is stated that as per Section 31 of the Notaries Act, 1952, it is the duty of the notary to see that the instrument is duly stamped.

I have perused copies of the affidavits placed by the petitioner during the course of arguments. There is a recital in the said affidavits to the earlier partition, which was effected on 7.7.1996, but, by the said documents itself, there was no partition. In any event, even as per the provisions of the Notaries Act referred to above, there is no such power on the respondent to issue instructions to the petitioner to recover the stamp duty from the parties concerned and to make over the same to the respondent. If there is a violation of the provisions of the conditions of licence/authorization, by following the necessary procedure, respondents may consider for cancellation of such authority. But, there is no such power under the provisions of the Notaries Act for issuance of instructions to the petitioner to collect from the parties concerned and make over to the Government. Even assuming that a document attracts stamp duty, steps can always be taken against the parties to recover the amount directly, but the same is no ground for issuance of the impugned memo directing the petitioner to recover the said amount and make-over the same to the respondent. Further, in spite of explanation submitted by the

petitioner, there is no reason assigned for giving such instructions for collection of the said amount by the petitioner in the impugned proceedings dated 14.2.1998. As such, the impugned memo is liable to be set aside. The impugned memo dated 14.2.1998, therefore, is set aside. However, this will not preclude the respondent to take steps against third parties, if they are liable for any deficit stamp duty in accordance with the provisions of the Stamp Act and the rules made thereunder.

The writ petition is allowed. No order as to costs.

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19.1.2007

R.SUBHASH REDDY, J.

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